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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR VARGAS,

Defendant and Appellant.

B232283

(Los Angeles County
Super. Ct. No. LA063433)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Susan Speer, Judge. Affirmed.

Oscar Vargas, in pro. per.; and Paul Stubb, Jr., under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Oscar Vargas appeals from the judgment entered following his conviction by a jury of assault with a deadly weapon and possession of a controlled substance. No meritorious issues have been identified either by Vargas's appointed counsel or by our own independent review of the record and analysis of the multiple contentions presented by Vargas in five separately filed, handwritten supplemental briefs. We affirm.

PROCEDURAL BACKGROUND

On December 14, 2009 Vargas was charged by information with assault with a deadly weapon (knife) (Pen. Code, § 245, subd. (a)(1))¹ with a special allegation he had previously served a separate prison term for a felony (§ 667.5, subd. (b)) (L.A.S.C. case No. LA063433). Represented by counsel, Vargas entered a plea of not guilty and denied the special allegation.

On February 2, 2010 Vargas asked to represent himself (*Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562]) and submitted the required form for in propria persona status (the *Faretta* waiver form). After reviewing Vargas's completed *Faretta* waiver form, the trial court denied his request and declared a doubt as to his mental competence. Criminal proceedings were suspended, and Vargas was ordered examined by a court-appointed mental health expert. At a hearing in April 2010 the trial court reviewed the psychiatric evaluation prepared by the court-appointed expert and found Vargas to be incompetent to stand trial, committed Vargas to the Department of Mental Health and adjourned the proceedings. Following treatment at Metropolitan State Hospital, Vargas was returned to court with a certification of mental competency by the hospital director on October 19, 2010. The trial court found defendant competent to stand trial and reinstated criminal proceedings.

In a second pending case Vargas was charged with possession of a controlled substance (methamphetamine) (Health & Saf. Code, § 11377, subd. (a)) (L.A.S.C. case No. LA063562). At a November 2, 2010 pretrial conference the trial court granted

¹ Statutory references are to the Penal Code unless otherwise indicated.

Vargas's request to represent himself on both cases and relieved his appointed counsel on case No. LA063433.

At a pretrial hearing on March 7, 2011 Vargas rejected the People's offer to allow him to plead guilty to a "non-strike [§] 245" and to receive a time-served sentence. Vargas also told the court he was not willing to accept appointment of counsel to represent him at trial. Vargas requested his two cases be tried together, and against the court's advice, agreed to have them consolidated. Case No. LA063433 was amended by interlineation to add a second count of possession of a controlled substance.

Jury trial commenced on March 8, 2011. Vargas was found guilty on both counts. In a bifurcated proceeding Vargas admitted the prior prison term enhancement.

On March 23, 2011 the trial court sentenced Vargas to the middle term of three years for assault with a deadly weapon and struck the prior prison term enhancement. The court imposed a concurrent term for possession of a controlled substance. The trial court awarded Vargas presentence custody credit and ordered him to pay a \$60 criminal conviction amount, an \$80 court security fee and a \$600 restitution fine. A parole revocation fine was imposed and suspended pursuant to section 1202.45.

FACTUAL BACKGROUND

1. Summary of Prosecution Evidence

a. The aggravated assault

Vargas and Tracy Thompson had dated for about six months. In the early morning of October 7, 2009, Vargas took Thompson's car keys and ordered her to get into the passenger seat of her car so he could drive. As Vargas drove, the couple argued. Vargas accused Thompson of cheating on him with various other men. Over the course of 12 hours inside the car, Vargas poked Thompson with a knife whenever her responses upset him. He also sliced the interior of her car. Ultimately, Vargas stabbed Thompson in the leg. After much discussion, Vargas got out of the car and allowed Thompson to drive herself to the hospital, where she was treated and released.

b. *The possession charge*

Early on November 6, 2009 Los Angeles Police Officer Taylor McLaws noticed Vargas walking on the street, carrying a bottle of Smirnoff Ice between two pillows. Vargas appeared agitated and hyperactive as if he were under the influence of a controlled substance. McLaws approached Vargas, whom he recognized from an earlier arrest. Vargas consented to a search. McLaws found a glass pipe and a usable quantity of methamphetamine inside a coin pocket.

2. *Summary of Defense Evidence*

Vargas testified in his own defense that both he and Thompson had mental disorders for which they take medication. According to Vargas, he was diagnosed as suffering from paranoid schizophrenia. When Thompson fails to take her medication, she acts “like something out of ‘The Exorcist.’”

Vargas also testified Officer McLaws had no reason to approach him. The Smirnoff bottle was not in plain sight, and Vargas’s unsteady gait was due to a crippling foot injury. Vargas admitted to having been “stoned” on marijuana at the time, explaining the officer mistakenly wrote methamphetamine. Vargas conceded his memory of what had occurred on November 6, 2009 was poor because he was not on medication that day.

No other witnesses testified for the defense.

DISCUSSION

We appointed counsel to represent Vargas on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On November 15, 2011 we advised Vargas he had 30 days within which to personally submit any contentions or issues he wished us to consider. During the following four months we received five handwritten supplemental briefs, with various attachments, in which Vargas challenged his conviction on a number of grounds. (We granted Vargas permission to file his additional supplemental briefs to ensure he had a full opportunity to raise any and all issues.) Although none of Vargas’s claims presents an arguable issue, pursuant to

People v. Kelly (2006) 40 Cal.4th 106, 110, 120-121, we identify Vargas's contentions and explain the reasons they fail.

1. *Evidence Code Section 402 Hearing*

Following an Evidence Code section 402 hearing, the trial court determined Vargas could question Tracy Thompson about her current medications and impeach her with her felony conviction for theft with a prior theft-related conviction (§ 666). However, the court precluded Vargas from questioning Thompson about her pre-October 2009 health history and medications, as well as her conviction for unlawful possession of drugs. The court specifically denied as irrelevant any attempt by Vargas to raise at trial Thompson's purported sexual history, which Vargas claimed precipitated the aggravated assault. On appeal Vargas contends he was improperly "instructed to omitt [*sic*] the series of events that led up to the incident. [*Sic.*] Reducing [his] credibility during testimony in front of [the] jury." Assuming Vargas is referring to the court's ruling he could not question Thompson about her sexual history, the court properly ruled it is not relevant in this case.

2. *Access to Jail Law Library*

Vargas contends, because of security "lockdowns" at the jail, he had limited access to the jail law library, which made it "impossible" for him to prepare an adequate defense. Although Vargas explained that jail "lock downs" prevented him from preparing and filing a pre-trial suppression motion, he never again complained of insufficient access to the jail law library, either before or during trial. In any event, to support a claim he was deprived of the right to present a defense as a self-represented defendant, Vargas must do more than merely assert a lack of access to the jail's law library. He must demonstrate he was otherwise denied reasonable resources necessary to present his defense under all the circumstances of this case, which he has failed to do. (*People v. Moore* (2011) 51 Cal.4th 1104, 1124 ["in assessing the reasonableness of the access provided under all the circumstances, '[i]nstitutional and security concerns of

pretrial detention facilities may be considered in determining what means will be accorded to the defendant to prepare his or her defense”’].)

3. *Substantial Evidence of Aggravated Assault*

Vargas makes the following contentions, which we interpret as a claim of insufficient evidence: The aggravated assault on Tracy Thompson was accidental; Vargas intended to cut the interior of the car, not Thompson; and his mental state was impaired because Officer McClaws had taken away his medication two weeks earlier.² Thompson’s testimony that Vargas poked her and then stabbed her in the leg with a knife was sufficient evidence to support the aggravated assault verdict. (See *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028.) Determining witness credibility is the exclusive province of the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Nothing in the record suggests Thompson’s testimony was inherently improbable or physically impossible. (See *People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372.)

4. *Gender Bias*

The record fails to support Vargas’s claim he suffered gender bias because the bench officer, prosecutor, bailiff, court clerk and much of the jury were women.

5. *Adverse Immigration Consequences*

Vargas claims he is currently involved in federal immigration proceedings and faults the trial court for failing to advise him of the adverse immigration consequences pursuant to section 1016.5. However, the statute, applies only to defendants who waive their jury trial rights in favor of a negotiated plea. (§ 1016.5, subd. (a).) Here, Vargas exercised his right to a jury trial.

² On September 30, 2009 Officer McLaws had detained Vargas during an unrelated incident and found Seroquel on Vargas. After determining Vargas did not have a prescription for the drug, a controlled substance, McLaws arrested Vargas for possession of a dangerous drug without a prescription. (Bus. & Prof. Code, § 4060.)

6. *Other Issues*

To the extent other issues are perfunctorily asserted by Vargas, they are entirely devoid of evidentiary and legal support and, in any event, have been abandoned in light of the lack of legal argument, citation to authority or reference to the record. (See *People v. Barnett* (1998) 17 Cal.4th 1044, 1107, fn. 37.)

We have examined the entire record and are satisfied Vargas's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly*, *supra*, 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.